

**IC 32-17.5                      ARTICLE 17.5. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT**

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**IC 32-17.5-1-0.2                      Application of certain amendments to prior law**

Sec. 0.2. The amendments made to IC 32-3-2-1, IC 32-3-2-3, IC 32-3-2-4, IC 32-3-2-5, and IC 32-3-2-6 concerning disclaimer of interests (before their repeal, codified at IC 32-17-7, before its repeal) by P.L.276-1989 do not apply to disclaimers that are effective before July 1, 1989.

*As added by P.L.220-2011, SEC.519.*

**IC 32-17.5-1-1                      Applicability**

Sec. 1. This article applies to a disclaimer of an interest in or power over property created after June 30, 2003.

*As added by P.L.5-2003, SEC.1. Amended by P.L.6-2010, SEC.36.*

**IC 32-17.5-1-2                      Effect on other statutes**

Sec. 2. This chapter does not limit the right of a person to waive, release, disclaim, or renounce an interest in or power over property under a statute other than this article.

*As added by P.L.5-2003, SEC.1. Amended by P.L.6-2010, SEC.37.*

**IC 32-17.5-1-3                      Disclaiming interest in existence on July 1, 2003**

Sec. 3. Except as otherwise provided in IC 32-17.5-8, an interest in or power over property existing on July 1, 2003, may be disclaimed after June 30, 2003, if the time for delivering or filing a disclaimer under IC 32-17-7 (before its repeal) has not expired.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-1-4                      Construction**

Sec. 4. In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-1-5                      Citing article**

Sec. 5. This article may be cited as the "Uniform Disclaimer of Property Interests Act (1999)".

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-2                      Chapter 2. Definitions**

32-17.5-2-1	"Beneficiary designation"
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32-17.5-2-8	"Person"
32-17.5-2-9	"State"
32-17.5-2-10	"Time of distribution"
32-17.5-2-11	"Trust"

**IC 32-17.5-2-1                      "Beneficiary designation"**

Sec. 1. "Beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

- (1) an annuity or insurance policy;
- (2) an account with a designation for payment on death;
- (3) a security registered in beneficiary form;
- (4) a pension, profit sharing, retirement, or other employment related benefit plan; or
- (5) any other nonprobate transfer at death, except for property held as joint tenants with rights of survivorship or as tenants by the entireties.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-2-2                      "Disclaimant"**

Sec. 2. "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-2-3                      "Disclaimed interest"**

Sec. 3. "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-2-4                      "Disclaimer"**

Sec. 4. "Disclaimer" means a refusal to accept an interest in or power over property.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-2-5                      "Fiduciary"**

Sec. 5. "Fiduciary" means:

- (1) a personal representative, a trustee, or an agent acting under a power of attorney; or
- (2) a person authorized to act as a fiduciary with respect to the property of another person.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-2-6                      "Future interest"**

Sec. 6. "Future interest" means an interest that, if it takes effect in possession or enjoyment, takes effect later than the time of its creation.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-2-7                      "Jointly held property"**

Sec. 7. "Jointly held property" means property held in the name of at least two (2) persons

under an arrangement in which:

- (1) all holders have concurrent interests; and
- (2) the last surviving holder is entitled to the whole of the property.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-2-8        "Person"**

Sec. 8. "Person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a government, a governmental subdivision, an agency, or instrumentality, a public corporation, or any other legal or commercial entity.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-2-9        "State"**

Sec. 9. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band or Alaskan native village recognized by federal law or formally acknowledged by a state.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-2-10      "Time of distribution"**

Sec. 10. "Time of distribution" means the time when a disclaimed interest would otherwise have taken effect in possession or enjoyment.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-2-11      "Trust"**

Sec. 11. "Trust" means:

- (1) a charitable or noncharitable express trust and any additions to the trust, regardless of when or how the trust is created; and
- (2) a trust created under a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-3 Chapter 3. Power to Disclaim; Irrevocability of Disclaimer**

32-17.5-3-1	Disclaiming power or interest in property
32-17.5-3-2	Fiduciary's right to disclaim
32-17.5-3-3	Disclaimer requirements
32-17.5-3-4	Partial disclaimer
32-17.5-3-5	When irrevocable
32-17.5-3-6	Disclaimer not a transaction, assignment, or release

**IC 32-17.5-3-1 Disclaiming power or interest in property**

Sec. 1. A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if the creator of the interest or power imposed:

- (1) a spendthrift provision or similar restriction on transfer; or
- (2) a restriction or limitation on the right to disclaim.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-3-2 Fiduciary's right to disclaim**

Sec. 2. Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if:

- (1) the creator of the power or interest imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim; or
- (2) an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-3-3 Disclaimer requirements**

Sec. 3. (a) As used in this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(b) A disclaimer must:

- (1) be in a writing or other record;
- (2) state that it is a disclaimer;
- (3) describe the interest or power disclaimed;
- (4) be signed by the person making the disclaimer; and
- (5) be delivered or filed in the manner provided in IC 32-17.5-7.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-3-4 Partial disclaimer**

Sec. 4. A partial disclaimer may be expressed as:

- (1) a fraction;
- (2) a percentage;
- (3) a monetary amount;
- (4) a term of years;
- (5) a limitation of a power; or
- (6) any other interest or estate in the property.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-3-5 When irrevocable**

Sec. 5. A disclaimer becomes irrevocable upon the occurrence of the later of the

following to occur:

(1) The disclaimer is delivered or filed as set forth in IC 32-17.5-7.

(2) The disclaimer becomes effective as set forth in IC 32-17.5-4 through IC 32-17.5-6.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-3-6           Disclaimer not a transaction, assignment, or release**

Sec. 6. A disclaimer made under this article is not a transfer, an assignment, or a release.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-4****Chapter 4. Disclaimer of Interest in Property**

32-17.5-4-1

Rules applicable to a disclaimer of an interest in property

**IC 32-17.5-4-1****Rules applicable to a disclaimer of an interest in property**

Sec. 1. Except for a disclaimer under IC 32-17.5-5 or IC 32-17.5-6-1, the following rules apply to a disclaimer of an interest in property:

- (1) A disclaimer takes effect:
  - (A) when the instrument creating the interest becomes irrevocable; or
  - (B) upon the intestate's death if the interest arose under the law of intestate succession.
- (2) A disclaimed interest passes according to any provision in the instrument creating the interest:
  - (A) that provides for the disposition of the interest should the interest be disclaimed; or
  - (B) that concerns disclaimed interests in general.
- (3) If the instrument creating the disclaimed interest does not contain a provision described in subdivision (2), the following rules apply:
  - (A) If the disclaimant is an individual, the following rules apply:
    - (i) Except as provided in items (ii) and (iii), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.
    - (ii) If, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive at the time of distribution.
    - (iii) If the disclaimed interest would have passed to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest passes by representation to the descendants of the disclaimant who survive at the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest becomes part of the residue under the instrument creating the disclaimed interest.
  - (B) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.
- (4) If the disclaimed interest arose under the law of intestate succession, the disclaimed interest passes as if the disclaimant had died immediately before the intestate's death.
- (5) Upon the disclaimer of a preceding interest:
  - (A) a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution; and
  - (B) a future interest held by the disclaimant is not accelerated in possession or enjoyment.
- (6) If a beneficiary of a transfer on death transfer (as defined in IC 32-17-14-3(16)) disclaims an interest in the property, the disclaimant's interest in the property passes as follows:
  - (A) In the case of a disclaimant who is an individual, as if the disclaimant had died immediately before the death of the owner (as defined in IC 32-17-14-3(7)).
  - (B) In the case of a disclaimant who is not an individual, as if the disclaimant did not exist before the death of the owner (as defined in IC 32-17-14-3(7)).

*As added by P.L.5-2003, SEC.1. Amended by P.L.238-2005, SEC.54; P.L.6-2010, SEC.38; P.L.190-2016, SEC.41.*

**IC 32-17.5-5****Chapter 5. Disclaimer of Rights of Survivorship in Jointly Held Property**

32-17.5-5-1

Disclaimer by surviving joint holder

**IC 32-17.5-5-1 Disclaimer by surviving joint holder**

Sec. 1. (a) This subsection applies upon the death of a holder of jointly held property only if, during the deceased holder's lifetime, the deceased holder could have unilaterally regained a part of the property attributable to the deceased holder's contribution without consent of any other holder. Another holder may disclaim an amount that may not exceed the amount determined in STEP THREE of the following formula:

STEP ONE: Determine the amount of the property attributable to the deceased holder's contributions.

STEP TWO: Determine the quotient of:

(A) one (1); divided by

(B) the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates.

STEP THREE: Determine the product of:

(A) the STEP ONE amount; multiplied by

(B) the STEP TWO quotient.

(b) This subsection applies in the case of the death of a holder of jointly held property that is not subject to subsection (a). Another holder may disclaim an amount that may not exceed the amount determined in STEP FOUR of the following formula:

STEP ONE: Determine the value of the total amount of the jointly held property.

STEP TWO: Determine the product of:

(A) the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; multiplied by

(B) the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates.

STEP THREE: Determine the quotient of:

(A) one (1); divided by

(B) the STEP TWO result.

STEP FOUR: Determine the product of:

(A) the value determined in STEP ONE; multiplied by

(B) the quotient determined in STEP THREE.

(c) A disclaimer under subsection (a) or (b) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(d) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

*As added by P.L.5-2003, SEC.1. Amended by P.L.6-2010, SEC.39; P.L.42-2011, SEC.64; P.L.178-2011, SEC.11.*

**IC 32-17.5-6 Chapter 6. Disclaimer of Certain Powers or Interests**

32-17.5-6-1	Disclaimer by trustee
32-17.5-6-2	Disclaiming power of appointment
32-17.5-6-3	Disclaimer by appointee of power of appointment
32-17.5-6-4	Disclaiming power held in fiduciary capacity

**IC 32-17.5-6-1 Disclaimer by trustee**

Sec. 1. If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-6-2 Disclaiming power of appointment**

Sec. 2. If the holder of a power of appointment or other power not held in a fiduciary capacity disclaims the power, the following rules apply:

- (1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.
- (2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.
- (3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-6-3 Disclaimer by appointee of power of appointment**

Sec. 3. (a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by:

- (1) persons eligible to receive property upon exercise of the power of appointment; or
- (2) a taker in default of an exercise of a power of appointment;

takes effect as of the time the instrument creating the power becomes irrevocable.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-6-4 Disclaiming power held in fiduciary capacity**

Sec. 4. (a) If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-7 Chapter 7. Delivery or Filing of Disclaimer**

32-17.5-7-1	Delivery; in general
32-17.5-7-2	Interest created by intestate succession or will
32-17.5-7-3	Interest in testamentary trust
32-17.5-7-4	Interest in an intervivos trust
32-17.5-7-5	Interest created by beneficiary designation
32-17.5-7-6	Disclaiming after beneficiary designation irrevocable
32-17.5-7-7	Jointly held property
32-17.5-7-8	Disclaimer by object or taker in default of exercise of power of appointment
32-17.5-7-9	Appointee of nonfiduciary power of appointment
32-17.5-7-10	Fiduciary of a power over a trust or estate
32-17.5-7-11	Disclaimer by agent

**IC 32-17.5-7-1 Delivery; in general**

Sec. 1. Subject to sections 2 through 11 of this chapter, a disclaimer may be delivered by:

- (1) personal delivery;
- (2) first class mail; or
- (3) any other method likely to result in receipt of the disclaimer.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-7-2 Interest created by intestate succession or will**

Sec. 2. A disclaimer of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, must be:

- (1) delivered to the personal representative of the decedent's estate; or
- (2) filed with a court having jurisdiction to appoint the personal representative if no personal representative is then serving.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-7-3 Interest in testamentary trust**

Sec. 3. A disclaimer of an interest in a testamentary trust must be:

- (1) delivered to the trustee then serving;
- (2) delivered to the personal representative of the decedent's estate if no trustee is then serving; or
- (3) filed with a court having jurisdiction to enforce the trust if no personal representative is then serving.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-7-4 Interest in an intervivos trust**

Sec. 4. A disclaimer of an interest in an inter vivos trust must be:

- (1) delivered to the trustee then serving;
- (2) filed with a court having jurisdiction to enforce the trust if no trustee is then serving; or
- (3) delivered to the settlor of a revocable trust or the transferor of the interest if the disclaimer is made before the time the instrument creating the trust becomes irrevocable.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-7-5 Interest created by beneficiary designation**

Sec. 5. A disclaimer of an interest created by a beneficiary designation made before the time the designation becomes irrevocable must be delivered to the person making the beneficiary designation.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-7-6           Disclaiming after beneficiary designation irrevocable**

Sec. 6. A disclaimer of an interest created by a beneficiary designation made after the time the designation becomes irrevocable must be delivered to the person obligated to distribute the interest.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-7-7           Jointly held property**

Sec. 7. A disclaimer by a surviving holder of jointly held property must be delivered to the person to whom the disclaimed interest passes.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-7-8           Disclaimer by object or taker in default of exercise of power of appointment**

Sec. 8. (a) This section applies to a disclaimer of an interest in property by:

- (1) an object; or
- (2) a taker in default;

of exercise of a power of appointment.

(b) At any time after the power was created, the disclaimer must be:

- (1) delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or
- (2) filed with a court having authority to appoint a fiduciary if no fiduciary is then serving.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-7-9           Appointee of nonfiduciary power of appointment**

Sec. 9. A disclaimer by an appointee of a nonfiduciary power of appointment must be:

- (1) delivered to:
  - (A) the holder;
  - (B) the personal representative of the holder's estate; or
  - (C) the fiduciary under the instrument that created the power; or
- (2) filed with a court having authority to appoint the fiduciary if no fiduciary is then serving.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-7-10          Fiduciary of a power over a trust or estate**

Sec. 10. A disclaimer by a fiduciary of a power over a trust or estate must be delivered as provided in section 2, 3, or 4 of this chapter as if the power disclaimed were an interest in property.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-7-11          Disclaimer by agent**

Sec. 11. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-8 Chapter 8. Limitation or Bar of Disclaimer**

32-17.5-8-1	Waiver
32-17.5-8-2	Events barring disclaimer
32-17.5-8-2.5	Disclaimer barred in amount of child support arrearage
32-17.5-8-3	Power held in fiduciary capacity
32-17.5-8-4	Power not held in fiduciary capacity
32-17.5-8-5	Other law
32-17.5-8-6	Effect of disclaimer

**IC 32-17.5-8-1 Waiver**

Sec. 1. A disclaimer is barred by a written waiver of the right to disclaim if the waiver is:

- (1) executed before the date of the disclaimer;
- (2) executed by the person having the right to disclaim; and
- (3) delivered or filed in the same manner that a disclaimer would be delivered or filed under IC 32-17.5-7.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-8-2 Events barring disclaimer**

Sec. 2. A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

- (1) The disclaimant accepts the interest sought to be disclaimed.
- (2) The disclaimant voluntarily:
  - (A) assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed; or
  - (B) contracts to take an action described in clause (A).
- (3) A judicial sale of the interest sought to be disclaimed occurs.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-8-2.5 Disclaimer barred in amount of child support arrearage**

Sec. 2.5. (a) This section applies to a disclaimer of an interest in property by a disclaimant who is delinquent (as defined in IC 31-9-2-36(b)) before the disclaimer becomes effective.

(b) A disclaimer of an interest in property is barred up to the amount of the disclaimant's child support arrearage.

*As added by P.L.80-2010, SEC.52.*

**IC 32-17.5-8-3 Power held in fiduciary capacity**

Sec. 3. A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by the previous exercise of the power.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-8-4 Power not held in fiduciary capacity**

Sec. 4. A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by the previous exercise of the power unless the power is exercisable in favor of the disclaimant.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-8-5 Other law**

Sec. 5. A disclaimer is barred or limited if the disclaimer is barred or limited by Indiana law other than this article.

*As added by P.L.5-2003, SEC.1.*

**IC 32-17.5-8-6 Effect of disclaimer**

Sec. 6. (a) A disclaimer of a power over property that is barred by this article is

ineffective.

(b) A disclaimer of an interest in property that is barred by this article takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this article had the disclaimer not been barred.

*As added by P.L. 5-2003, SEC.1.*

**IC 32-17.5-9                      Chapter 9. Tax Qualified Disclaimer**

32-17.5-9-1                      Disclaimer for estate and gift tax purposes

**IC 32-17.5-9-1                      Disclaimer for estate and gift tax purposes**

Sec. 1. Notwithstanding any other provision of this article, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated under:

(1) Title 26 of the United States Code, in effect on July 1, 2003, or later amended or a successor statute; and

(2) the regulations promulgated under the statute referred to in subdivision (1); as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this article.

*As added by P.L.5-2003, SEC.1.*